IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20048 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DASHARATBHAI J PATEL - Petitioner(s)
Versus
SHARDA EDUCATION TRUST & 6 - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1 - 4,6 - 7.
MR D.C.DAVE & MS MAMTA R VYAS for Respondent(s) : 1,
MS ARCHNA RAWAL, AGP for Respondent(s) : 2,
MR R.G.MAHAJAN &MR HARSHAL M SHAH for Respondent(s) : 5,
MR MITUL K SHELAT for Respondent(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 28/03/2007
ORAL JUDGMENT

1. This petition was filed praying for following reliefs:-

9. In the premises, therefore, the petitioner, prays as beneath:

(A) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, order or direction, commanding the All India Council for Technical Education, respondent No.5 herein to withdraw the approval granted in favour of respondent No.1-trust for establishing a Diploma in Pharmacy College vide approval letter dated August 7, 2006, and this Hon'ble Court may further be pleased to call for the file relating to the grant of approval for establishing Diploma in Pharmacy College in favour of respondent No.1-trust;

(B) That this Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, order or direction, commanding the State Level Committee and the Expert Committee, respondent No.2 herein, to place before this Hon'ble Court the procedure followed and the details submitted by respondent No.1 with respect to seeking a permission to establish a Diploma in Pharmacy College and the comments and findings of the State Level Committee based on the same;

(C) That this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, commanding an independent authority to look into the conduct of the Vice-Chancellor and Registrar of Hemchandracharya North Gujarat University with respect to the decision taken by the Registrar and Vice-Chancellor of Hemchandracharaya North Gujarat University regarding issuance of certificates and passing appropriate orders regarding affiliation to the college to be established by respondent No.1-Trust and be further pleased to recommend appropriate actions against the Vice-Chancellor and the Registrar with respect to their decision pursuant to the application of respondent No.1 dated 17th August, 2006, on the issues pertaining to giving certificates;

(D) That this Hon'ble Court be pleased to issue appropriate writ, order or direction, calling upon Village Panchayat, Rajpur, respondent No.3 herein, to explain as to how and in which manner the certificate regarding permission in favour of respondent No.1-Trust for putting up construction was granted, when respondent No.1 trust was not even owner of the land in question;

(E) That this Hon'ble Court be pleased to direct an independent authority to inquire into and

investigate the details about the approval of Diploma in Pharmacy college granted in favour of respondent No.1-trust by;

(1)State Level Committee;
(2) Expert Committee;
(3) All India Council for Technical Education, Central Region Office; and
(4) North Gujarat University,

and direct the appropriate independent authority to take action against these authorities for having acted contrary to law;

(F) That pending admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to commanding the All India Council for Technical Education, respondent No.5 herein to forthwith withdraw the approval granted in favour of respondent No.1-trust for establishing a Diploma in Pharmacy College vide approval letter dated August 7, 2006;

(G) That this Hon'ble Court be pleased to award the costs of this Special Civil Application to the petitioner herein;

And

(H) That this Hon'ble Court be pleased to pass such other further orders as the nature and

circumstances of the case may demand.

2. The petitioner, who is a member of the Executive Committee of Hemchandracharya North Gujarat University, has preferred this petition in the back drop of the following facts. Respondent No.1-Trust is stated to have come into existence vide Trust Deed dated 20.10.2005. As the Trust desired to open and run a Pharmacy College at Rajpur, Taluka & District: Patan on 07.02.2006 the Trust made an application to the Directorate of Technical Education Department, Government of Gujarat, respondent No.2 herein. It appears that the said application came to be processed and on 05.05.2006 the respondent No.2 called upon respondent No.1-Trust to remain present with original documents on 09.05.2006. On 31.05.2006 an Expert Committee was appointed who took inspection and vide confidential report dated 08.06.2006 reported non-compliance by the Trust three norms out of various norms stipulated by All India Council for Technical Education (AICTE) in the following words.

(i) building and land are not owned by the said Trust

(ii) the building shown to the Expert Committee during the visit has been taken on a rental basis and

(iii) Laboratory facility do not appear to be adequately furnished.

3. Considering the report of the Expert Committee, the State Level Committee decided not to grant approval to the Trust. The Trust, therefore, went before the Appellate Committee, as according to the Trust, on the basis of various documentary evidences, the Trust was in a position to substantiate that the Trust had been able to comply with AICTE norms and the deficiencies recorded by the Expert Committee in its report dated 08.06.2006 no longer existed. The Appellate Committee granted a recommendation for approval for a period of one year on 05.08.2006. On the same day the recommendation was forwarded to AICTE to grant recognition.

4. AICTE granted recognition on 07.08.2006. Armed with the said recognition, the petitioner approached respondent No.6-University seeking affiliation. This application was made by respondent No.1-Trust on 17.08.2006 accompanied by a fee receipt for a sum of Rs.50,000/-. On the same day, namely, 17.08.2006 respondent No.6-University issued a certificate which reads as under:

HEMCHANDRACHARYA
NORTH GUJARAT UNIVERSITY
P.B.NO.21, UNIVERSITY ROAD,

PATAN-384 265(NG)

No./Aca/Affi/ngu/noc/7624/2006
Date: 17/08/2006

C E R T I F I C A T E

This is to certify that this University will not have any objection in recommending the State Government to grant affiliation to the Diploma in Pharmacy college proposed by Shree Sharda Education trust named Shri B.H.Patel College of Pharmacy at Rajpur Ta & Dist. Patan. Provided they get approval from AICTE, PCI and the State Government and started within the University Perview.

Sd/-
FOR, REGISTRAR

5. Subsequently, this was followed by another certificate dated 17/22.08.2006 issued by In-charge Vice Chancellor. On 23.08.2006 the respondent-University wrote to the petitioner and asked him to be a member of a Local Inspection Committee. Immediately, on the same day, the petitioner informed the respondent-University that there were various deficiencies in the application moved by the respondent-Trust and even respondent-University had acted in haste in granting the certificates.

6. On 08.09.2006 the Local Inspection Committee tendered its report wherein it was stated that at the time of inspection on 06.09.2006 at Rajpur there was no building in existence and only a board showing name of Shri Sharda Education Trust was standing on vacant land; that the Managing Trustee had candidly accepted that there was no building in existence at Rajpur, nor was any rented premises available for running a college at Rajpur, but there was a rented premises at Patan in one building known as P.P. Complex. The Local Inspection Committee further recorded that there were no documents relatable to the land in the file containing papers handed over by the respondent-University to the Local Inspection Committee, nor did the file contain any map; further not only should the Trust have a building of its own, even the land has to be owned by the Trust and such land has to be non agricultural character for the purposes of education. That all these requirements were lacking.

7. In this context, on 12.09.2006, respondent-Trust wrote to the Vice Chancellor of respondent-University that the application for affiliation for academic year 2006-07 may not be processed and the application may be processed for academic year 2007-2008 only.

8. In light of the aforesaid facts after the Notice was issued by this Court on 19.09.2006 and various respondents had put in appearance on 03.10.2006, the Court made the following order :

Date : 03/10/2006

ORAL ORDER

Learned advocate Shri Jani for the petitioner submitted that the petitioner has a definite information to believe that the so called letter of recognition dated 7th August, 2006 produced at Annexure M to the petition on the basis of which the respondent no.1-institution is seeking affiliation and allotment of students, has not been issued by AICTE at all.

Learned advocates Ms. Vyas, Mr. Mitul Shelat and learned AGP Ms. Shah pray for time for taking instructions.

At their request, though the petition is adjourned to 11th October, 2006, respondent no.1 is directed to produce original of the order of recognition granted by AICTE. University as well as the Government will also produce before this Court, order of recognition supplied to them by respondent no.1-institution.

AICTE though duly served is not represented. AICTE is also directed to produce on record by next

date of hearing any order of recognition, if granted to respondent no.1.

Sd/-

(Akil Kureshi, J.)

9. Subsequently, on 02.11.2006 the Court called upon various respondent-Authorities to place on record their response to the various queries raised by the Court. An order dated 02.11.2006 came to be made by the Court in the following terms :

Date : 02/11/2006

ORAL ORDER

1. The petitioner herein has sought to bring to notice of this Court certain factual aspects which according to the petitioner reflect irregularities in grant of recognition to respondent no.1 trust to start Pharmacy college.

1.1. Through affidavits on record particularly one filed by the State Government, it can been seen that initially the State authorities were not inclined to grant approval to respondent no.1 trust since the inspection committee of the State found that the trust does not have necessary infrastructure to start the Pharmacy college for the current academic year. Accordingly the State declined to grant approval. The short coming

noticed included lack of proper building for the college as well as non-availability of laboratory facilities. However, subsequently, Appellate Committee of the State granted approval by communication dated 5/8/2006. This communication was forwarded to AICTE by the Appellate Committee. By order dated 7th August, 2006, AICTE granted recognition to the respondent no.1 trust permitting the trust to start Pharmacy college.

1.2. It appears that respondent no.1 had permission to admit 60 students and in fact as per the say of the petitioner admission committee of the State also alloted students to the extent of in take capacity.

1.3. Subsequently, however, respondent no.1 trust itself represented to the State authorities that for the current academic year, it is unable to create necessary infrastructure as undertaken and that, therefore, students may not be alloted for admission.

2. Learned advocate Shri P.K.Jani for the petitioner submitted that at all stages the authorities have shown undue haste and undue favour in granting affiliation and recognition to respondent no.1. He submitted that even the University had shown great haste in processing the request of respondent no.1.

2.1. I would reserve my comments on the submissions made. However, at this stage prima-facie it appears that though at one stage the State Government itself was of the opinion that respondent no.1 cannot be recommended for grant of affiliation, in a short period of time, the Appellate Committee without any further change in circumstances over-turned this view and communicated its recommendations in favour of respondent no.1 on 5th August, 2006. It would also appear that on the basis of communication which was forwarded by the State Government to AICTE on 5th August, 2006, AICTE granted its affiliation in favour of respondent no.1 on 7th August, 2006.

2.2. It is thus a fit case of inquiring further into two aspects of the matter. Firstly, State Government would be required to place before this Court reasons which weighed with the Appellate Committee in granting approval in favour of respondent no.1 by communication dated 5/8/2006. Secondly, it would also be important to understand how AICTE granted its affiliation in less than two days of the State making its recommendations.

3. Learned advocate Shri Mahajan appearing for AICTE was asked by the Court as to when and in what manner did the AICTE receive the communication dated 5th August, 2006. He stated that the communication was received on 5th

August, 2006 itself. As to how this could be done, he stated that the same must have been received through special messenger. He stated that it is common practice to receive such communications by AICTE through special messenger from State Governments. Prima-facie I am unable to accept veracity of such a procedure. Particularly, in this case it would be extremely important to know the mode of communication of the recommendation of the Government dated 5th August, 2006 and the exact point of time the AICTE received the same. Additionally, it would also be necessary to collect information about the steps taken by AICTE once it received the communication.

4. Under the circumstances, the State Government is directed to produce the original files for the perusal of the Court particularly one containing the recommendations of the Appellate Committee which culminated into communication dated 5th August, 2006.

4.1. AICTE is also directed to produce original documents on record and also file affidavit indicating:

1. *The mode and manner of communication of the recommendation dated 5th August, 2006.*
2. *The exact point of time and the date on which the same was received by the AICTE.*
3. *Steps taken by AICTE after the said*

communication was received.

4. *The affidavit shall also indicate the general practice of receiving such communications through personal messenger and whether in the present case the same was received through personal messenger on behalf of State Government or respondent no.1.*

S.O. to 9th November, 2006.

Sd/-

(Akil Kureshi, J.)

10. This was followed by another order dated 09.11.2006 whereunder the Court issued directions in the following terms:

Date : 09/11/2006
ORAL ORDER

Learned advocate for respondent No.1-Trust has been directed to supply the following details on affidavit:

(i) Total number of staff (Academic and Non-Academic) with details qua each staff member as to when he is employed and whether they are employed temporarily or permanently and from which date.

(ii) Whether the salaries are being paid or not to the said staff so appointed and if paid,

from which account?

(iii) So far as the members of the staff are concerned, detailed addresses of them from where they can be communicated.

(iv) Audited account of the Trust from the date of inception upto 31.03.2006 and unaudited accounts from 01.04.2006 to 31.10.2006.

(v) Source of investment for the purchase of land.

(vi) Total numbers of the Trustees and names of the said Trustees.

(vii) Minutes of the meetings of the Trust with original Minute Book.

Learned Additional Government Pleader has been directed to place on record the action that the Directorate of Technical Education and/or the State Government intend to initiate considering the facts which have come on record. Matter to come up on 14.11.2006.

Sd/-
[D.A. MEHTA, J]

11. On 2nd February, 2007 after hearing the parties the following order came to be made by the Court:

Date : 02/02/2007

ORAL ORDER

1. On 9th November, 2006 this Court had categorically directed the learned Additional Government Pleader to place on record the action that the Directorate of Technical Education and/or the State Government intend to initiate considering the facts which have come on record.

2. Thereafter on 13th November, 2006 an affidavit has been filed by the Dy. Director, Directorate of Technical Education, Gandhinagar wherein in paragraph No.8 and 9 the following averments are made:

"8. It is stated that the office of director of Technical Education received the communication dated 4.11.2006 from the AICTE on 8.11.2006 whereby it is desire to revisit and re-inspection of the institution for verification of the infrastructure facilities. In the aforesaid obligation, further request is made to the State of nominate one expert for revisit and re-inspection of the institution. The communication dated 4.11.2006 of the AICTE is response by office of the Director on Technical Education whereby it is communicated on 10.11.2006 and it is informed that name of the person who will joint expert committee will be sent shortly. The copy of both the communications are

annexed herewith and marked at Annexure-I to the reply.

9. It is stated that as the Director Technical Education has offered his willingness to the expert committee to visit the institution for verification of infrastructure facilities. After re-verification of re-inspection an appropriate steps will be taken as per report".

3. When the matter came up for hearing yesterday namely 1st February, 2007, the Court called upon the learned AGP to furnish information as to what has happened after communication dated 10.11.2006 referred to in paragraph No.8 of the aforesaid affidavit. Today the learned AGP has tendered a copy of communication dated 17.11.2006 addressed to the Regional Director, AICTE whereunder the Director of Technical Education has nominated one Shri Dr. Mukesh C. Gohel as State Government nominee to conduct the expert Committee visit as desired by AICTE. Hence, the learned advocate for AICTE was called upon by the Court to explain the action taken pursuant to such communication dated 17.11.2006. The learned advocate is not in a position to answer in absence of any instructions, because according to him, a copy of the communication dated 17.11.2006 has been made available to him only today.

4. In the circumstances the matter to come up on 8th February, 2007.

Sd/-

(D.A.Mehta, J.)

12. On behalf of AICTE it is stated that the recommendation dated 05.08.2006 made by the Directorate of Technical Education was received by the Regional Office of AICTE on 07.08.2006 through Courier during office hours. That taking into consideration the request of Shri Y.M.Shukla, Joint Director, Directorate of Technical Education, Gujarat State, Gandhinagar, the letter of approval dated 07.08.2006 was prepared, duly signed and the staff instructed by the Central Regional Officer to take necessary action for dispatch; that the order came to be dispatched through Courier on 11.08.2006 to the Principal Secretary, Higher & Technical Education, State of Gujarat. The Central Regional Officer has further stated in affidavit dated 06th November, 2006:

"4. That in the light of serious allegations made in the petition, the AICTE have requested the State Government to provide all records (application of Sharada Education Trust, its enclosures, report of expert committee, recommendations of State Level

Committee and Appellate Committee, along with compliance report of the Trust) for verification. The AICTE is also ready to do inspection of the Shri B.H.Patel College of Pharmacy, Rajpur, Dist. Patan and verification of records. Subject to direction of this Hon'ble Court because the matter is Sub-Judice before the Hon'ble H.C. of Gujarat."

13. Subsequently, it appears that AICTE conducted surprise inspection on 05.02.2007 at 12.30 p.m. On 6th February, 2007 AICTE withdrew the approval of respondent-Trust and forfeited the fixed deposit receipt of the Trust for non compliance of norms of AICTE and furnishing false declaration in the application dated 07.02.2006.

14. The facts which have come to light during course of hearing of the present petition show the functioning of responsible authorities in a very poor light. As can be seen from the application moved by the petitioner-Trust on 07.02.2006 there are numerous false statements made by the respondent-Trust. In the summary appearing at the outset of the application form submitted by the respondent-Trust on 07.02.2006 the column "whether the construction of the

building is completed as per approved building plan for the proposed institution", the answer filled in by the respondent-Trust is "No", followed by a statement "construction at plinth level". In paragraph No.6 of the application form which relates to land, the respondent-Trust has brazenly mentioned area of land as 2.5 Acres and tick marked the column "whether owned by the applicant-Trust" as "Yes". In the subsequent sub-paragraph No.(iii) the respondent-Trust has again brazenly stated that land has been purchased through sale-deed and some registration number is mentioned along with date of registration being 05.02.2006. Similarly, in paragraph No.7, it is stated that the building plan has been approved by the Competent Authority and the name of the Authority is Secretary Rajpur Gram Panchayat. In paragraph No.8, sub paragraph No.(ii) "whether the accounts of the applicant-Trust are audited", has been answered "Yes". It is not necessary to deal with any further items.

15. In relation to various statements regarding ownership of land and building suffice it to state that the Surprise Inspection Report dated 05.02.2007 of AICTE finds that the land was in-fact purchased in three parcels, on 02.08.2006, 04.09.2006 and 04.09.2006 with each one of the

parcels of land being of different areas. Thus on the date the application was made by the Trust i.e. on 07.02.2006, the Trust was not owning a single piece of land, and there could be no question of there being any construction, even up to plinth level, as suggested in the application.

16. Similarly, in relation to the statement regarding accounts being audited, the Auditors' report which has come on record for the first period namely on 26.10.2005 to 31.03.2006 is dated 19.09.2006. It is not the case of the petitioner that on 07.02.2006, the accounts were audited. In the very nature of things, the first accounting year not having ended there could be no question of accounts being audited by 07.02.2006.

17. There is one more aspect of the matter which has not been noticed by any of the authorities. As directed by this Court, the respondent-Trust vide affidavit dated 30th November, 2006 has placed on record the audited accounts for the period 26.10.2005 to 31.03.2006 and unaudited accounts for the period ended on 31.10.2006. The respondent-Trust has all along maintained that the Trust has enough facilities in rented premises on P.P. Complex, Patan, but the

accounts do not reveal any expenditure towards rent at any point of time. Therefore, whether in fact any premises were rented at all is a question which remains unanswered except for bald averments made by the respondent-Trust, through its Managing Trustee in absence of any evidence.

18. In the circumstances, it is apparent that not only the floating of the Trust, but the so called activities have all remained on paper in absence of any concrete evidence to show that the Trust was equipped to conduct any educational activity.

19. As the record reveals, after various interim orders made by this Court, the Directorate of Technical Education has written to AICTE on 03.02.2007 to withdraw the approval granted to the respondent-Trust and also requested AICTE not to consider any fresh application made by the respondent-Trust or the Trustees in future atleast for three subsequent years for establishment of any professional course under AICTE. However, as already noticed AICTE has rested content with withdrawing the recognition granted on 7th August, 2006.

20. In the aforesaid circumstances, as it is necessary to ensure that such unscrupulous elements do not derive any benefit either by hoodwinking the authorities, or in collusion with the Authorities, it would be proper to issue certain directions and guidelines.

21. AICTE has placed on record revised hand book relating to approval process for establishment of new technical Institution and introduction of additional course(s) / increasing intake / extension of approval in existing institutions. The said guidelines ensure vide paragraph No.2.6.9(a) and (b) that an Expert Visiting Committee shall visit the proposed premises of the Institution to examine the preparedness of the Institution to impart quality education as per norms, standards and conditions prescribed by the Council from time to time; and such expert committee shall be comprised of three expert members nominated by Chairman, AICTE, and one expert member nominated by the State Government, and one expert member nominated by the Affiliating University. In this context, AICTE may take into consideration and ensure that wherever the examining body is different from the Affiliating University, a member of such

examining body shall also be included in the Expert Committee.

22. The application and the supporting documents which an applicant seeking recognition presents before AICTE shall be presented on affidavit made by the person / principal officer of the Institution with a statement on oath that, if on verification, any of the documents or statements made in the application form are found to be untrue, the deponent of the affidavit shall be liable to be prosecuted for making a false declaration.

23. AICTE shall ensure that either at the time of rejecting an application, or withdrawing the recognition already granted, if the facts so warrant, AICTE shall black list the Institution concerned along with the persons in charge of the Institution for a period of next three years in the minimum, from making a fresh application for any subsequent academic year during such period of three years. AICTE can put this into effect qua respondent No.1-Trust as recommended by Directorate of Technical Education.

24. The recognition granted by AICTE should be a self limiting one by specific mention of the time limit on expiry of which the recognition shall cease to have effect.

25. The aforesaid guidelines shall be over and above the guidelines recorded by AICTE as per notification No.F-37-3/Legal / 2004 dated 14.09.2006 as published in December, 2006.

26. The learned AGP has placed on record Office Order dated 6th February, 2007 of the Directorate of Technical Education whereunder one Shri P.D.Solanki, has been appointed as an Inquiry Officer with a direction to tender the Inquiry Report within a period of 15 days from the date of the order. The record does not reveal as to what has happened thereafter. The Directorate is ordered to place on record the outcome of the inquiry and consequential steps the State Government has initiated or intends to initiate in this regard considering the dubious role of the Appellate Committee in making recommendation to the AICTE despite adverse report of the State Level committee in light of the facts which have come on record.

27. A copy of this order shall be forwarded to the Chief Commissioner of Income Tax, Gujarat-I, Aaykar Bhavan, Ahmedabad to initiate appropriate inquiries considering the conduct of the respondent-Trust, and also considering the fact that it is stated that on 20.10.2006 a return of income had been filed in Ward / Circle Guj-W-1242, Mehsana (2); to specifically inquire as to whether the Trust is an actual existing entity or is a mere paper entity taking into consideration the subsequent period, namely, after 01.04.2006 onwards.

28. In light of the facts which have come on record it would be in the fitness of things if respondent No.1-Trust is called upon to pay exemplary costs of this litigation which are quantified at a sum of Rs.10,000/-. The petitioner shall acknowledge the receipt of costs which shall be in the form of two cheques, each of Rs.5,000/-, one in favour of the Blind Persons Association, Ahmedabad and another in favour of Gujarat Cancer Research Institute, Ahmedabad.

29. The State Government to place the report on record on or before 13th April, 2007. The petition stands disposed of accordingly.

30. The Court records its appreciation for the assistance rendered by the learned advocates, including AGP, appearing for respective parties considering the fact that the litigation had not remained an adversarial litigation after the initial orders made by the Court.

(D.A.MEHTA, J.)

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